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Office of the United States Political
Adviser for Japan,
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MEMORANDUM OF CONVERSATION

Subject: ~~Informal Discussions~~ on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director, Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Masao OSATO, Chief, Fourth Section, Treaties Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the United States Political Adviser, Tokyo, Japan.

Date: Friday, March 7, 1952 FIFTH INFORMAL MEETING

ARTICLE VIII

Mr. Yukawa suggested that the phrase "for the exclusive account of their employers" be inserted after the word "companies" in the second sentence of paragraph 1, Article VIII(line 11), this phrase to read "such nationals and companies, for the exclusive account of their employers, in connection with the planning and operation of their enterprises,...".

Mr. Singer questioned the need for this additional phrase, and Mr. Otabe replied that it would be clearer for the Japanese agencies to have this phrase included, since most audits and other documents for submission to the Japanese Government should, under local law, be prepared or certified by legally competent public accountants or other qualified persons.

Mr. Adams replied that the Department of State had indicated that it was prepared further to consider the Japanese proposal and suggested that for the purposes of these discussions paragraph 1, Article VIII be amended as indicated by Mr. Yukawa.

Mr. Yukawa then asked whether it was understood that those aliens engaging in certain activities, even if employed for the exclusive account of a company, such as certified public accountants (in the preparation of required certificates, applications, tax declarations, and corporate accounts) as well as architects, civil, electrical and mechanical engineers, and other technicians engaged in activities related to public interest or public safety, must comply with qualifications and requirements of technical competence applicable to nationals in the same professions.

Mr. Adams replied that it was clearly understood that individuals engaged in the activities mentioned by Mr. Yukawa should under any circumstances comply with local requirements regarding qualifications and competence.

Mr. Yukawa then stated that with respect to professional activities, Japan desired specifically to reserve the profession of part pilots and notaries public, since it was not believed that aliens should be permitted to engage in these two activities.

Mr. Adams replied that consideration might be given, if necessary, to an exception in paragraph 2, Article VIII, for a limited number of professions of an especially sensitive status, but that this paragraph should not be undermined by an immoderate list of reserved professions. He added that there are state laws in the United States barring aliens from the practice of some professions, but reminded the Japanese representatives of Dr. Waring's earlier statement to the effect that the FCN Treaty would be paramount over state legislation in these matters. Mr. Adams added that to the extent the FCN Treaty granted national treatment with respect to the exercise of professions, any contrary provision of state laws would ipso facto be overriden. Mr. Singer added that the existence of such state regulations barring aliens from certain professions brought into sharp focus the advantage to Japanese nationals of retaining paragraph 2 with as few exceptions as possible.

Mr. Otabe stated that notaries public are regarded as having quasi-official status and are appointed from among duly qualified Japanese nationals by the Attorney General. The restriction on aliens becoming port pilots, added Mr. Otabe, was common to all countries in accordance with established international practice.

Mr. Adams asked whether the Japanese representatives wished to exclude any other professions from the national treatment provisions of paragraph 2. Receiving a negative reply from Mr. Yukawa, Mr. Adams stated that the Japanese proposal regarding port pilots and notaries public would be submitted to the Department of State for its consideration.

Mr. Otabe then stated that the first sentence of paragraph 3, Article VIII, had already been included as paragraph 3 of the revised Article VII previously proposed by the Japanese side. Mr. Otabe suggested that the second sentence (regarding political activities) of paragraph 3, Article VIII be inserted in Article XXI of the standard draft in as much as it stipulates a general exception applicable to the entire treaty. If this were done, and the revised Article VII proposed by the Japanese were acceptable to the Department of State, paragraph 3 of the standard draft's Article VIII would disappear.

Mr. Adams replied that further discussion of this point should be deferred pending clarification of the questions raised at the previous meeting on Article VII. He added that Mr. Otabe's suggestion regarding the second sentence of paragraph 3, Article VIII would be referred to the Department of State for consideration.

It was understood that the Japanese proposals for the insertion of "for the exclusive account of their employers" in paragraph 1, the insertion of an exception for port pilots and notaries public in paragraph 2, and the moving of the second sentence, paragraph 3, to Article XXI would be referred to the Department of State. The Japanese suggestion regarding the remainder of paragraph 3 was deferred pending further discussions on Article VII. Mr. Yukawa stated that there were no further points with reference to Article VIII and proposed the meeting proceed with the next article.

ARTICLE IX

Mr. Yukawa stated that the manner of providing separately for the treatment to be accorded to the nationals of either party with respect to acquisition of title to land or rights in all other immovable properties should be avoided, that a uniform provision should be adopted as in the case of other articles, and that most-favored-nation treatment should be accorded in this matter. He added that a great deal of importance was attached to this point since it would discriminate against

Japanese nationals in the United States, and would therefore be subject to severe criticism in the Diet. Mr. Yukawa stated further that for the same reason it was desired that national and most-favored-nation treatment should be stipulated in both paragraphs 1 and 2 regarding the leasing of land and buildings necessary or incidental to the conduct of any business or other activity permitted under Articles VII and VIII of the standard draft.

Mr. Singer stated that it was not correct to suppose that this Article would discriminate against Japanese nationals in the United States. Although the standard draft provisions on real property might on first impression appear unbalanced, Mr. Singer pointed out that a closer analysis would reveal the genuine reciprocity which is achieved under the terms of Article IX. Mr. Singer added that this Article does not in any way breach the principle that all proposed provisions of the treaty should be - and are in fact - based on mutuality. He indicated that Uruguay, Colombia, Italy and Israel were persuaded of the correctness of this view and were therefore able to accept the Department of State's standard draft Article IX, as was also in a real sense Greece with appropriate recasting of language to fit local circumstances. Mr. Singer stated that the Department of State has endeavored in the standard draft to formulate provisions on real property as close to the national treatment ideal as practical considerations permit. Mr. Singer pointed out that there is reciprocal national treatment on leasing properties for treaty purposes (notwithstanding any state law to the contrary) and that there is reciprocal national treatment as to ownership generally insofar as the local laws of the United States permit. He also pointed out that there is the right to withhold national treatment on ownership of property, insofar as Japan may wish to exercise this right with respect to citizens and corporations of individual states of the United States which may deny or restrict national treatment to Japanese nationals. Mr. Singer emphasized that Japan would be free to assure equalization of rights in connection with Article IX.

Mr. Yukawa stated that the Japanese side would take note of Mr. Singer's explanation. He stated that he thought there was not true bilateral reciprocity, but rather that it was a one-sided or unilateral reciprocity, because if Japan permitted a person domiciled in California, for example, to acquire title to land in Japan, the Japanese Government could not claim a similar right for a Japanese national in California.

Mr. Kanematsu inquired whether the FCN Treaty would not - as in the case of professional activity previously discussed - be paramount over state legislation with respect to property rights. If this were the case, Mr. Kanematsu added, Article IX could be re-drafted along lines similar to other articles of the standard draft.

Mr. Adams replied that interference by treaty with individual state prerogatives in the United States with respect to land policies had historically been a delicate subject and that the United States Senate had in the past refused to ratify at least two treaties which attempted to set aside those state prerogatives and establish a treaty right to national treatment on real property ownership. Mr. Adams added that it is possible, however, to provide national treatment with respect to the leasing of real property necessary to the conduct of treaty activities (notwithstanding some state laws circumscribing alien leaseholds) and that this was a very valuable treaty right in the United States. The standard draft offers to assure such leasehold rights.

Mr. Singer stated that with respect to ownership rights, the Department of State's proposal - a "de facto reciprocity" formula first developed in the treaty of 1937 with Siam - was devised to approach the national treatment ideal as nearly as possible. This formula provides in effect for reciprocal national treatment on ownership to the extent that the state laws permit, but it establishes Japan's right to withhold this standard of treatment from citizens and corporations of states in the United States that do not accord national treatment to Japanese nationals and corporations. He said that this formula in previous treaties is reported to have influenced some states toward ameliorating the alien disabilities of their real property laws, and the adoption of this formula in treaties with Japan and other countries would undoubtedly be pertinent to the reconsideration (now evident in the United States) of alien land disabilities still persisting in certain state laws. Mr. Singer added that local regulations and policies in the United States make it necessary that paragraph 1 (b), Article IX be phrased in just such a manner as is found in the standard draft, and that paragraph 2 is designed to permit similar reservations on property rights on the part of Japan or any other country which concludes an FCN Treaty with the United States.

Mr. Otabe pointed out that according to paragraph 1, nationals of Japan in the United States are guaranteed the right to lease land and buildings appropriate to the conduct of activities pursuant to Articles VII and VIII, while on the other hand paragraph 2 does not impose any restriction upon the nationals of the United States to lease land and buildings in Japan, and therefore, that such provisions seemed unbalanced because the treatment accorded nationals of the United States is wider in scope than that guaranteed to the Japanese.

Mr. Adams replied that a careful study of paragraph 2 would reveal the principle of reciprocity contained in this Article, and would doubtlessly clarify the question in Mr. Otabe's mind. He reminded Mr. Otabe of previous statements to the effect that Japanese nationals might lease lands and buildings appropriate to the activities recognized under the

Articles VII and VIII by virtue of this treaty, notwithstanding any state regulations to the contrary. In reply to the question by Mr. Otabe, Mr. Adams stated that the right to lease or acquire agricultural lands was beyond the scope of paragraph 1 (a), and that while Japan would be obligated to permit a Californian, for example, to lease in Japan land and buildings appropriate to the activities permitted under Articles VII and VIII, Japan need not, under paragraph 2, Article IX, allow the leasing of agricultural lands to a Californian as long as the latter's state imposed similar restrictions on Japanese.

Mr. Mori then stated that a fishing right is regarded in Japan as an immovable property under the Fishery Law, and inquired whether such a fishing right was included in the category of immovable properties under Article IX.

Mr. Adams replied that a right of this type would not be regarded as a real or immovable property right under this Article. Mr. Mori asked whether fisheries and agriculture would be among the activities for which the leasing of land was assured under Article IX or whether these fell under the category of "exploitation of land or other natural resources" reserved under paragraph 2, Article VII.

Mr. Singer replied that these activities were not regarded as falling under Article IX, and that Mr. Mori was correct in his view that they might come within the scope of the reservations under Article VII.

Mr. Yukawa stated that he and his associates could understand the reasons advanced by the American side for the drafting formula employed in Article IX, but that the Japanese side would like to reserve its attitude with respect to this question in view of the serious nature of the problems involved.

It was agreed that discussions on Article IX would continue at the next meeting, which was set for Tuesday, March 11, 1952.

/s/ M. Yukawa

Morio Yukawa
Director
Economic Affairs Bureau
Ministry of Foreign Affairs

/s/ Frank A. Waring

Frank A. Waring
Counselor for Economic Affairs
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